Supreme Court, U.S.
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No. 88-1019

In the
Supreme Court of the United States

OCTOBER TERM, 1988

HERBERT D. BERKSON,
PETITIONER,

v.

DEL MONTE CORPORATION, ET AL.,
RESPONDENTS.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

Brief In Opposition of Respondents Palmer & Dodge and Pillsbury, Madison & Sutro

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February 3, 1989

BATEMAN & SLADE, INC. BOSTON, MASSACHUSETTS

Question Presented

Whether all the courts below correctly held that either the statute of limitations, collateral estoppel, or both bar *pro se* petitioner's claims against respondents Palmer & Dodge and Pillsbury, Madison & Sutro.

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Respondents Palmer & Dodge and Pillsbury, Madison & Sutro respectfully request that this Court deny the petition for writ of certiorari seeking review of the First Circuit Court of Appeal's decision in this case. In that unpublished decision, set forth at pages 1a-1h of petitioner's appendix, the Court of Appeals affirmed *per curiam* the entry of summary judgment against petitioner based on res judicata, collateral estoppel, and the statute of limitations.

Parties and Opinions Below

The Brief and Appendix In Opposition of the Respondent, United Brands Company sets forth the parties and describes the opinions below. The appendix to that brief sets forth the magistrate's opinion approved by the District Court and affirmed by the Court of Appeals.

Statement of the Case

This is the third "Bananagate" lawsuit petitioner Berkson has filed to contest the court-approved divestiture of certain United Brands Company properties in 1972. The United Brands brief in opposition sets forth the general history of this litigation.

In the lawsuit now before the Court petitioner sued United Brands Company, Del Monte Corporation, Henry Kissinger, and a host of other defendants, including the law firms of Palmer & Dodge and Pillsbury, Madison & Sutro. Petitioner claims a "Bananagate" conspiracy involving "rogue" elements of the CIA, "Mafia hit-men," and the "threat of assassination from the CIA itself." Brief for Appellant in the Court of Appeals at 10, 11, 22.

Respondents Palmer & Dodge and Pillsbury, Madison & Sutro moved to dismiss or for summary judgment. Petitioner filed no admissible evidence with his opposition to this motion. He submitted instead newspaper clippings (*e.g.* "CIA disguises for Col. Oliver North," "Iran arms deal: the aftermath"), hand-lettered annotations, and various other unauthenticated materials. C.A. App. 254-83.[1]

[1] References to "C.A. App. —" are to the 2,269-page appendix filed with the Court of Appeals.

The United States Magistrate hearing the case recommended that Palmer & Dodge, and Pillsbury, Madison & Sutro, along with every other defendant, be granted summary judgment. He found that collateral estoppel barred the claims that were based on the 1972 divestiture, a subject of earlier Berkson litigation. C.A. App. 350-52. The magistrate further found that the statute of limitations barred petitioner's claim under the Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. § 1961, against Palmer & Dodge for its defense of Del Monte in Berkson's earlier federal lawsuit. C.A. App. 353-54. The District Court adopted the magistrate's recommended rulings, and the Court of Appeals then affirmed.

Reasons for Denying the Writ

Petitioner presents no issue worthy of this Court's attention. He does not now challenge the collateral estoppel ruling below. That uncontested ruling disposes of all his claims against the respondent law firms based on the 1972 divestiture.

The statute of limitations bars petitioner's remaining claim against Palmer & Dodge for its defense against petitioner's earlier litigation. The Brief In Opposition of the Respondent, Goodwin, Procter & Hoar — another law firm sued for its defense against petitioner Berkson's prior federal lawsuit — disposes of petitioner's statute of limitations arguments. That brief is hereby adopted and incorporated by reference.

Conclusion

The petition for certiorari should be denied.

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February 3, 1989

[2] Counsel of Record. Counsel note that petitioner has filed a "Motion That The Appearance of Robert W. Meserve For Del Monte Corporation Should Be Stricken . . . . " In fact, Mr. Meserve has not entered his appearance for Del Monte in this proceeding. He is counsel of record for respondents Palmer & Dodge and Pillsbury, Madison & Sutro.